Executive Summary
Statement of Commissioner Ness

March 25, 1998

I welcome the opportunity to discuss Section 271 of the Communications Act and the decisions the Federal Communications Commission has rendered on applications filed by three of the regional Bell companies under that provision.

My main message can be stated succinctly: Congress got it right when it drafted Section 271, and the Commission has been getting it right in the Section 271 decisions we have rendered. First, Congress was absolutely right to decide that the Bell companies should have a clear path to enter the long distance market. And, second, Congress was equally right to insist that the prerequisite for that entry be (a) the Bell companies' full implementation of the local market-opening provisions of Section 251, (b) their compliance with the structural safeguards of Section 272, and (c) a showing that entry will serve the public interest.

The FCC's approach to Section 271 is driven by the simple precepts of fidelity to law and fairness to parties. I am committed to faithfully implement the substantive and procedural requirements established by Congress. I am determined to apply these requirements as written, to the facts presented on the record, without favor to any interest.

As a participant in each of the four Commission decisions on Section 271 applications, I can assure you that in each instance the Commissioners and agency staff have meticulously read, reread, considered, and followed the law as you wrote it. The facts and arguments presented by the parties have been considered carefully, and the Commissioners have exercised their very best judgment in rendering final decisions. I personally challenged and probed each major component of the recommended decisions to satisfy myself that it was accurate, fair, and consistent with the law.

In short, this process has been working precisely as it should. In this regard, I was pleased
-- but not surprised -- by the decision last Friday by the U.S. Court of Appeals for the District of Columbia Circuit, which unhesitatingly upheld each challenged element of the Commission's first Section 271 decision, which dealt with SBC's application for Oklahoma.

Last August, when we ruled on Ameritech's Section 271 application for Michigan, I stated, "I look forward to the day when I can cast my vote to approve a petition by a Bell company to offer in-region, interLATA service. When that day comes, the

conditions for robust and enduring local competition within a state will have been created, and to the benefits of that competition will be added the introduction of a powerful new competitor in the long distance market and the elimination of a restriction that will have outlived its usefulness." Unfortunately, we have not yet been presented with an application that demonstrates compliance with the statutory standard.

Many of the requirements set forth in the statute, though stated in very few words, are pregnant with meaning. For example, the checklist item dealing with unbundled network elements has only 15 words, counting cross-references. But to evaluate a Bell company's compliance with this requirement requires a close examination of the company's treatment of its competitors in a variety of processes (e.g., ordering elements, provisioning them, installing them, repairing them) and for a variety of elements (e.g., loops, switching, databases).

These details matter. Problems in any one of these areas have the potential to disrupt service to consumers and to stymie competition. For this reason, the Commission went to some lengths in the Ameritech Michigan order to spell out what kinds of information it thought would be pertinent to demonstrating compliance with key elements of Section 271.

But we have not been content to rely solely on the application process to provide guidance. We are now conducting proactive, "getting to yes" discussions. The door is open for the Bell companies, for their actual and would-be competitors, and for other organizations to come in and discuss the competitive checklist with our Common Carrier Bureau. We are also talking with the state public utility commissions and with the Department of Justice.

This process is designed to facilitate mutual understanding, identify problem areas and workable solutions, and increase the prospects for meritorious applications in the future. Those applications, I hasten to add, will be evaluated on the basis of the record compiled during the formal application process, and not on the basis of any information that may have been conveyed as part of the informal process.

I believe the course the Commission is following will in time produce the results intended by the Telecommunications Act. Of course, given all the effort that preceded enactment of the statute, many had hoped that we would see rapid progress in the opening of local markets (as contemplated by Sections 251-253) and corresponding success in the disposition of Section 271 applications. In practice, we are seeing that opening local markets in the manner contemplated by the statute is extremely complicated in its own right, and there have been further delays resulting from foot-dragging on the part of some parties and some unfortunate decisions in the courts as well. The result is that no Bell company has yet presented us with an application that demonstrates compliance with Section 271.

Nonetheless, I believe that day is approaching. It will be accelerated by our past and continuing efforts to provide guidance about what is expected, and our constancy in requiring adherence to the statutory standards.